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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 14 OF 2024
IN
WRIT PETITION NO. 2212 OF 2023**

**GENERAL MANAGER, TELECOM AND OTHERS
VERSUS
M/S EARTH BUILDCON AND ANOTHER.**

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Mr. S.C. Arora, Advocate for the applicant.
Mr. Parag V. Barde, Advocate for respondent No.1/petitioners in writ
petition
Smt. Sudha Chintamani, Standing Counsel for respondent No. 2

**CORAM : RAVINDRA V. GHUGE &
S.G. CHAPALGAONKAR, JJ.**

DATE : 28th MARCH, 2024.

ORDER (Per S. G. Chapalgaonkar, J) :-

1. The Applicant seeks review of the order dated 12th April, 2023, passed by this Court in W.P. No. 2212 of 2023. The Petition was filed by the Respondent, impugning the order dated 14.2.2023 passed by Applicant No.1 by which, the Respondent firm was banned from participating in future tenders of BSNL w.e.f. 14.2.2023. This court allowed the Writ Petition and set aside the order dated 12.4.2023 passed by Applicant No.1.

2. Mr. S.C. Arora, learned advocate appearing for the Applicant submits that in the year 2016, Respondent No.1 had participated in the tender floated by BSNL office Jalna, for laying optical fiber cable in Bhokardan and Ghansawangi Clusters. Respondent No.1 was the successful bidder. He relied upon the experience certificate issued by the

Idea Cellular to meet the Tender condition regarding similar work. The Respondent No.1 submitted an undertaking and declaration that all the information, documents, photo copies of documents, certificates enclosed alongwith the tender offer, are correct and that if anything is found false and/or incorrect and/or reveals any suppression of fact at any time, BSNL would have right to debar tender offer/ cancel LOI/award of work/work order if issued and forfeit the EMD/SD/Bill pending with the BSNL. In addition, BSNL may debar the contractor from participation in its future tenders.

3. It was subsequently revealed that the work done certificate dated 27.4.2016, relied by Respondent No.1, purported to have been issued by Idea Cellular Limited, is fake/false document. Consequently, a show cause notice was issued to the Respondent No.1 and pending bill amount of Rs. 13,15,100/- was forfeited. Lateron, in pursuance of the advice of the Central Vigilance Office, New Delhi, new business with the Respondent No.1 firm was banned w.e.f. 14.2.2023. The Respondent No.1 had challenged the said order in W.P. No. 2212 of 2023. This Court allowed the writ petition vide order dated 12.4.2023 and set aside the order of ban passed against Respondent No.1.

4. Mr. Arora, the learned Advocate appearing for the Applicant urged to recall/review the order dated 12.4.2023 on the ground that the Respondent No.1 had given undertaking while obtaining the tender that in case of any fraud or suppression of material information, BSNL had right to debar the tenderer and also forfeit EMD/SD/Bill amount and further debar him from participating in the future tenders. The Central Vigilance Commission, New Delhi had advised the Applicant to take banning action against Respondent No.1 and on such advice the order

impugned in the Writ Petition was passed. He would further submit that the Respondent No.1 had secured the work under tender on the basis of false work done certificate dated 27.4.2017. The Idea Cellular Company, vide communication dated 27.11.2020 confirmed that the certificate dated 27.4.2017 is a false document. Respondent No.1 completed the tender work that was secured based on the forged document and obtained Experience Certificates dated 27.4.2017, 2.11.2017 and 16.6.2018 from the Applicant company and secured further contracts from the Applicant as well as other Government Departments and indulged in perpetuity of fraud. Mr. Arora would further submit that the action of banning the business was entirely independent, apart from action dated 6.5.2021 regarding forfeiture of bills. Consequently, he seeks review of the order dated 12.4.2023 passed by this Court.

5. Mr. Barde, learned advocate appearing for Respondent No.1 strongly opposes the prayer. He submits that the Respondent No.1 was served with a show-cause-notice dated 26.2.2021 and after considering the reply filed by Respondent No.1, the final action of forfeiture of pending bills worth Rs. 13,15,100/- has been taken against respondent No.1. Lateron, vide order dated 14.2.2023 further action to ban the business with the Respondent No.1 firm was taken without following the principles of natural justice. Further, such action was in the nature of double penalty for a single default. This Court after appreciating the aforesaid circumstances allowed the Writ Petition and quashed and set aside the impugned order, imposing ban against Respondent No.1. He submits that the grounds raised in the review application are regarding factual aspects and merit of the matter and do not constitute good grounds for review.

6. We have considered the rival submissions advanced by the learned advocates appearing on behalf of respective parties. We have perused the grounds of review carved out in the application. It is trite that this Court can review its own order only when the grounds prescribed under Section 114 and/or Order 47 of the CPC, 1908 exist. The errors leading to miscarriage of justice can be remedied when the patent and apparent errors on face of record have been occurred while passing the order. Even the review is possible when a new or important matter has been discovered which was not within the knowledge of the applicant at the time of passing the order under review.

7. The Honourable Supreme Court of India in the case of *“Lily Thomas and others Vs. Union of India” (2000) 6 SCC 224* and in the case of *“State of Rajasthan vs. Surendra Mohnot” reported in AIR 2015 SC 2925*, elaborated the scope of the powers of review. Keeping in mind the principles of law espoused in the said judgments, the grounds of review advanced on behalf of the applicant need to be examined.

8. The order under review depicts that this Court set aside the order dated 14.2.2023 issued by the Applicant No.1 on the ground that there can not be double punishment for the very same default. No such powers are vested with the authority. Secondly, the source of power with the respondent authority does not justify imposing ban on the Petitioner.

9. Going by the grounds raised in this application and submissions advanced on behalf of the Applicant, it can be gathered that after taking final action for default of the Respondent No.1 regarding forfeiture of bill amount of Rs. 13,15,100/- in the year 2021, second action dated 14.2.2023 had been taken as per the advice of Central

Vigilance Office, New Delhi, which has been set aside by this Court. Therefore, the ground of review sought to be urged are based on the very same material that was available and considered by this court while passing the order under review. The second contention is that the Respondent has obtained the Experience Certificates from the BSNL office on the basis of work executed and now he is using same for securing further works. In our considered view it cannot be a good ground for review. Such contention was neither subject matter of the Writ Petition, nor can it be advanced beneficially to ask review of the order passed by this court in writ petition.

10. Consequently, there is no merit in the application. Same stands dismissed.

[S.G. CHAPALGAONKAR, J.] [RAVINDRA V. GHUGE, J.]

grt/-